they could and should have taken, and which if it had been taken might well have resulted in the recovery of the missing tyres. I think this point is covered by the case of *Coldman v. Hill*[9]. The head-note to that case reads :—

> "An agister of cattle does not discharge himself of his duty as a bailee for reward by proving that they were stolen without his default, if by using reasonable diligence he could have recovered them.
>
> If, having failed to use such diligence, he is sued for loss of the cattle, he must prove, in order to discharge himself, that such diligence would have been unavailing; it is not for the bailor to prove that it would have retrieved the loss."

That case was an appeal from a Divisional Court, which had taken the view that "the burden of proof that the negligence caused the loss is on the plaintiff, and that as it is pure gueswork whether inquiries or search would have recovered the beasts or not, he fails to sustain the burden of proof he is under". This view was held to be erroneous by the Court of Appeal, and Bankes L.J. (at page 450) said the case was covered by the rule that the bailee must shew that the loss of the goods was not due to any fault of his own. In my view the defendants in this case have not done so. When their Deputy Traffic Manager was asked why he made no enquiries from the B.O.D. he replied that it was "because they had no more tyres than they should have had". But he agreed that their correct quantity might have been made up by the 17 missing Firestone tyres. And it is in evidence that after all the Firestone tyres had been removed some military tyres still remained in the defendants' godown. Allowance must be made for the difficulties under which the defendants were working at this time. But the fact is that a step was not taken which could have been taken without difficulty, and I am satisfied that upon the evidence the defendants have not discharged their burden of proving that the loss of the tyres was not due to any fault of theirs.

There must be judgment for the plaintiffs for $2053.10 with costs on Higher Scale.

Stay of execution for 14 days and if notice of appeal lodged stay to continue until the hearing of the appeal.

Judgment for the plaintiffs.

X. Y. v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.) December 15, 1949]

[Singapore — Magistrate's Appeal No. 144 of 1949]

Penal Code S. 354 — Unsworn evidence of girl of eight years — No corroboration — Whether conviction on such unsworn evidence without corroboration can stand.

In this case the appellant appealed against a conviction under S. 354 of the Penal Code. The alleged offence was in respect of a young girl of eight years of age who was not sworn. Her evidence was not corroborated. In his grounds of judgment the learned Magistrate said "I was so convinced that accused went to the secluded quarry with the girl that the only possible defences to which I could reasonably have paid attention would be that accused saw an animal crawling up the girl's skirt, or that he smacked her because she misbehaved herself while out with him."

Held, (1) that in such a case the absence of corroboration is not by itself a fatal objection to the validity of the conviction, but the appellate Court will scrutinize the record very carefully, because it is always an extreme thing to convict anyone on unsworn evidence; (2) that in this case the learned Magistrate had in his judgment displayed a wrong attitude to the child witness and therefore the conviction must be quashed.

Case referred to :—

(1) *Rex v. Velayuthan* (1935) M.L.J. 277.

MAGISTRATE'S APPEAL.

D. K. Walters (*Wee Chong Jin* with him) for the Appellant.

A. H. Simpson (D. P. P.) for the Crown.

Murray-Aynsley, C. J. : — In this case the appellant appeals against a conviction under section 354 of the Penal Code. Here the alleged offence was committed in respect of a young girl of eight years of age who was not sworn. Her evidence was not corroborated. In England, where unsworn evidence is given by children there is a statutory requirement of corroboration. Therefore, in England, this conviction could not have stood. Here there is no such statutory requirement but it has been wisely laid down in the case of *Rex v. Velayuthan*[1] that as a matter of prudence the evidence of such children should be treated in the same way as that of an accomplice. This, I take it, is also the practice in the case of adult witnesses in rape and other cases of that kind. The Magistrate appears to have been fully aware of the absence of corroboration and he does not appear to have misdirected himself as to what was required in such a case. In such circumstances the absence of corroboration is not by itself a fatal objection to the validity of the conviction. In such a case, however, an appellate Court will scrutinize the record very carefully, because it is always an extreme thing to convict anyone on unsworn evidence.

The Magistrate was obviously favourably impressed by the evidence of the girl concerned. From reading the record there is no reason at all to suppose that he was wrong in so doing. He was also favourably impressed by the evidence of her parents. Here again there is no reason to suppose that he was wrong. Unfortunately counsel (who did not appear on the appeal) made an accusation that the parents

had concocted the charge. That accusation was entirely unsupported in evidence and must have reacted unfavourably on the appellant. I think that there can be no suggestion that this is that kind of case. However, in his grounds of judgment the Magistrate went on to say: "I was so convinced that accused went to the secluded quarry with the girl that the only possible defences to which I could reasonably have paid attention would be that accused saw an animal crawling up the girl's skirt, or that he smacked her because she misbehaved herself while out with him". The visit to the quarry was only testified to by the girl herself; there was no corroboration, and the girl was unsworn. Even the strongest case can be confronted by a stronger, and this case could not be described as strong. Young children are at the best unreliable witnesses, and this passage displays an attitude which would be wrong with regard to any witness or any number of witnesses. In view of this I cannot regard the conviction as satisfactory. The appeal must be allowed and the conviction quashed.

Appeal allowed.

KOH ENG SOON v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.)
December 15, 1949]
[Singapore — Magistrate's Appeal No. 153 of 1949]

Penal Code S. 354 — Outraging modesty — Need for corroboration of evidence of complainant.

In this case the appellant had been convicted of an offence under S. 354 of the Penal Code. One of the grounds taken on appeal was that there was no corroboration of the evidence of the complainant.

Held, that in such a case corroboration is desirable and as the learned Magistrate had not given sufficient attention to this matter, the conviction must be quashed.

Cases referred to :—

(1) *Rex v. Baskerville* (1916) 2 K.B. 658.

(2) *Rex v. Velayuthan* (1935) M.L.J. 277.

MAGISTRATE'S APPEAL.

D. K. Walters (*C. H. Koh* with him) for the Appellant.

A. H. Simpson (D. P. P.) for the Respondent.

Murray-Aynsley, C. J. : — In this case the appellant had been convicted of an offence under section 354 of the Penal Code and sentenced to 2 months rigorous imprisonment.

Various objections were taken to the proceedings in the Court below. I think that the consideration of one matter is sufficient. In this case the complainant was an adult. In cases of this kind corroboration is desirable though not technically essential. Where the case has been heard by a magistrate or a District Judge the appellate Court must be satisfied that the Court below appreciated fully the desirability of having corroboration and was not under a misapprehension that something was corroboration which as a matter of law was not. In this connection it should be noted that what is described as corroboration in section 157 of the Evidence Ordinance is not corroboration for this purpose. The effect of section 157 is to render generally admissible statements by the complainant which in England are only admissible in cases of rape and kindred offences. Such statements are not corroboration in England and therefore, where as a matter of practice corroboration is required or desirable, they should not be regarded otherwise here.

The question of the complaint in these cases is different from that of corroboration. It is not in any way at the present time a legal requirement, but where there is no complaint within a time that is, in the circumstances reasonable, naturally no Court would convict, on the evidence of the complainant.

The law as to corroboration is laid down fully in the case of *Rex v. Baskerville*[1] and applied locally in *Rex v. Velayuthan*[2].

In the present case I do not consider that there was any corroboration and I am not satisfied that the Magistrate, who otherwise gave extremely careful attention to the matter, gave sufficient attention to this aspect of the case.

In the circumstances the appeal must be allowed and the conviction quashed.

Appeal allowed.

E. H. BATTAT & ANOTHER v. REX.

[C. C. A. (Murray-Aynsley, C. J., Evans and Gordon-Smith, JJ.), January 16, 1950]
[Singapore — Criminal Appeal No. 43 of 1949]

Proclamations issued by or under the authority of the Supreme Allied Commander — Validity of — Straits Settlements (Repeal) Act, 1946 — Singapore Colony Order in Council, 1946, ss. 1(2), 2, 42 and 45.

In this case the appellants were convicted of certain offences against the Finance Regulations made under the Finance Regulations Proclamation issued by the Supreme Allied Commander. The validity of all these convictions depended upon whether or not at material times these regulations were in force in the Colony.

Held, that (1) the Finance Regulations Proclamation of the Supreme Allied Commander in South East Asia was merely the order of a military commander and has no legal effect unless it has at some subsequent time been enacted as a law; (2) the Straits Settlements (Repeal) Act, 1946, by section 2 gives the Crown power to legislate for the Colony by Order in Council; (3) by sections 42 and 2 of the Singapore Order in Council the Proclamations of the Supreme Allied Commander in South East Asia were made law in the Colony; (4) the Finance Regulations Proclamation is accordingly now valid as a law and the conviction of the appellants must be upheld.